

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

IN THE MATTER OF:

GINA BOYCE,

Complainant,

and

REYNOLDS SERVICE COMPANY,

Respondent

)
)
)
)
)
)
)
)
)
)
)

CHARGE NO: 2005SF3602
EEOC NO: 21BA52237
ALS NO: S07-115

RECOMMENDED ORDER AND DECISION

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). A public hearing on the issue of damages was held before me in Carbondale, Illinois on September 14, 2007, after Respondent was found to be in default pursuant to the Commission's Order of March 8, 2007. Respondent failed to appear at the public hearing, and Complainant waived filing a brief. Complainant's counsel, however, filed a petition for attorney's fees, and Respondent has not filed a response to the petition as of the date of this Recommended Order.

Findings of Fact

Based on the record in this matter, I make the following findings of fact:

1. At some point in 1996, Complainant began employment at Respondent as a bookkeeper/office manager.
2. At all times pertinent to the instant case, Terry Reynolds was the owner of Respondent, which was a business that sold and moved mobile homes.
3. At all times pertinent to the instant case, John Reynolds was an employee of Respondent and a co-worker of Complainant, who was responsible for moving mobile homes. John Reynolds is also the brother of Terry Reynolds.

4. In mid-October, 2004, John Reynolds told Complainant in front of Terry Reynolds that she did not belong at Respondent because women did not belong in the mobile home business. Later on in the day, Terry Reynolds went to Complainant's home and apologized to Complainant and her husband for John Reynolds's conduct. During this conversation, Terry Reynolds acknowledged that he was aware that his brother John had a problem with women. The record is silent as to what, if any, discipline Terry Reynolds imposed on John Reynolds for his anti-female statements made to Complainant.

5. On October 27, 2004, Complainant came to work and encountered John Reynolds and Dwayne Sims in Respondent's office. At that time, John Reynolds told Complainant that Sims was her replacement, and that if she attempted to stay there he (John Reynolds) would "slap the shit out of" Complainant. John Reynolds also called Complainant a "fucking whore" and a "stupid bitch" and told Complainant that her "husband should dump her ass," and that "women don't belong in the business." John Reynolds additionally asked Complainant during the encounter why she was not present at the birth of her grandchild to see if Complainant's daughter had "dropped a black or white bitch." Complainant's encounter with John Reynolds lasted approximately 15 to 20 minutes.

6. At the end of the encounter on October 27, 2004, Sims asked Complainant to leave the premises since he was sure that John Reynolds would not leave the office until Complainant had left the premises. Complainant thereafter left Respondent's office

7. Complainant continued to perform services for Respondent until October 31, 2004, by working at her home. During this time, Complainant contacted Sims to make arrangements to obtain any necessary books to complete her job. Respondent never paid Complainant for the work done during the last two weeks of October, 2004.

8. Complainant made several attempts to contact Terry Reynolds after October 31, 2004 to determine the status of her job. However, Reynolds did not return Complainant's calls, and Complainant eventually filed for unemployment compensation.

9. At the time Complainant ceased working for Respondent, she was making \$300 per week with no benefits.

10. In July of 2005, Complainant obtained a job making \$10 per hour. Complainant began her training for the job, but was terminated at the end of her first week after someone at Complainant's new employer placed a call to Respondent seeking a work reference for Complainant.

11. Complainant received \$3,614 in unemployment benefits arising out of her departure from Respondent.

12. On November 7, 2005, Complainant started another unspecified job making \$968 every two weeks, or \$360 more than what she was making at Respondent over the same time period.

13. Complainant sustained \$12,886 in net lost wages as a result of her constructive discharge from Respondent.

14. Complainant sustained emotional damages in the amount of \$12,000 arising out of Respondent's failure to take reasonable corrective measures to stop the sexual harassment committed by John Reynolds.

15. The record is silent as to the experience of Complainant's counsel in discrimination matters, the hourly rate she charged other clients for similar discrimination claims, or the prevailing community rate for such legal services. The reasonable amount of attorney's fees associated with the prosecution of this matter is \$1,963.75.

Conclusions of Law

1. Complainant is an "employee" as that term is defined under the Human Rights Act.

2. Respondent is an "employer" as that term is defined under the Human Rights Act.

3. As a consequence of the default order entered on March 8, 2007, all of the allegations contained in Complainant's Charge of Discrimination are deemed admitted.

4. A prevailing complainant may receive actual damages, including lost wages, emotional distress damages and attorney's fees arising out of her Human Rights Act claim.

Discussion

On March 8, 2007, the Commission entered an Order finding Respondent to be in default after the Department of Human Rights filed a petition for a hearing to determine Complainant's damages arising out of Respondent's alleged failure to attend a fact-finding conference and failure to file a timely verified response to Complainant's Charge of Discrimination. The allegations in the Charge of Discrimination reveal that on October 27, 2004, a co-worker of Complainant's sexually harassed Complainant by calling her a series of sexually offensive derogatory terms, that Complainant opposed the sexually harassing behavior, that the co-worker's harassment created a hostile intimidating work environment, and that Respondent's owner, who was also the brother of the subject co-worker, failed to take any corrective action against the co-worker in spite of Complainant's protests about the co-worker's conduct. The Charge of Discrimination also alleges that Respondent retaliated against Complainant for having made a protest regarding the co-worker's conduct, and that the conduct of the co-worker, as well as the failure of Respondent to discipline said co-worker, served to constructively discharge Complainant from her position. Accordingly, as a result of the default order, I must take all of the allegations contained in the Charge of Discrimination as true, and I further note that said allegations are sufficient to state sexual harassment and retaliation claims against Respondent under the Human Rights Act.

During the public hearing, Complainant stated that she made \$300 per week at Respondent, and that she was off work for a year plus one week until she received a job that paid her more than what she was making at Respondent. She also stated that she was never paid by Respondent for the last two weeks of work ending on October 31, 2004. Accordingly, I

find that Complainant has an initial lost wages claim of \$16,500, i.e., 55 weeks times \$300.¹ However, that figure must be reduced by the amount of unemployment Complainant received subsequent to her departure, i.e., \$3,614. See, for example, *McShan and Granite City Steel Division*, 6 Ill. HRC Rep. 132, 136-37 (1982). Accordingly, Complainant is entitled to \$12,886 in net lost wages arising out of her constructive discharge from Respondent.

Complainant also seeks \$50,000 in emotional distress damages arising out of the verbal abuse committed by John Reynolds, and Respondent's failure to protect her from this abuse. In support of her claim, Complainant stated at the public hearing that she sought treatment for depression some eight months after the October 27, 2004 incident with John Reynolds, and that she was taking Lexapro after seeking mental health counseling. She further stated that she became embarrassed over the incident and kept to herself for a year and began to take measures to avoid the potential of seeing either John or Terry Reynolds in public. Complainant further stated that she believed she suffered a loss of reputation in the community because of her constructive discharge from Respondent.

In calculating an appropriate amount for emotional damages, I note that Complainant did not present any expert testimony to support her claim that her current depression arose out of the 15 to 20 minute verbal exchange she had with John Reynolds on October 27, 2004. Indeed, the best that Complainant could do at the public hearing was to put forth hearsay statements from unnamed medical providers that, according to Complainant, attributed "some of" her mental state to the loss of her job. (Tr. Vol. I at pg. 19.) Moreover, Complainant acknowledged that she had experienced similar anxiety attacks a long time prior to the October 27, 2004 incident, so she has not precisely ruled out any other stressor in her life that could have caused her anxiety. Complainant's husband also testified that since Complainant began her counseling, her unwillingness to encounter either John or Terry Reynolds in public is the only

¹ Complainant also testified that she was paid for the one week of training at a job in July of 2005. In theory, the amount of wages she received at this job should be deducted from her lost wages claim, but the record is silent as to the amount that Complainant had received.

lasting change in Complainant that he has observed. Thus, under this limited record, I find that Complainant's testimony did not establish a sufficient linkage between any medical diagnosis of depression and the events that led up to her constructive discharge.

This is not to say, however, that Complainant is not entitled to any emotional damages, and the incidents that she described at the public hearing certainly established outrageous conduct on the part of John and Terry Reynolds. However, my review of the case law indicates that the \$50,000 emotional damages figure sought by Complainant has been reserved for cases in which the harasser engaged in patterns of harassment that lasted between one and three years and pertained to offensive physical contact. (See, for example, *Davenport and Hennessey Forrestal Illinois, Inc.*, IHRC, ALS No. 3751R, November 20, 1998, and *Garrity and Lockett*, IHRC, ALS No. 6389, May 3, 1996.) The allegations in the instant Charge of Discrimination, though, concern two instances of verbal anti-female harassment that took place over a two-week period of time. As such, and in consideration of Complainant's testimony, I find that Complainant is entitled to a \$12,000 award for emotional damages. See, for example, *Haluska and Meijer, Inc.*, IHRC, ALS No. 05-223, February 20, 2004, where the complainant received \$10,000 in emotional damages arising out of a series of sexually-related remarks after the complainant similarly testified that she experienced depression and low self-esteem as a result of the harasser's conduct.

Attorney's fees.

Under the Commission's decisions in *Clark and Champaign National Bank*, 4 Ill. HRC Rep. 193 (1982) and *Schoneberg and Grundy County Special Education Cooperative*, 9 Ill. HRC Rep. 192 (1982), an attorney for the winning party must submit an affidavit that provides specific evidence of the prevailing community rate for her services during the relevant time period, as well as a list of specific tasks performed on behalf of the complainant in the prosecution of a claim before the Commission, in order to receive attorney fees under the Human Rights Act. (See, also, *Gaylord and Acorn Corrugated Box Co.*, 32 Ill HRC Rep. 59

(1987).) Complainant's counsel has not provided such an affidavit, and instead has submitted a one page petition alleging that: (1) she and Complainant entered into a contingency fee contract that grants counsel one third of any monies received by Complainant in this matter; and (2) Complainant's legal fees in preparation for filing the instant Complaint totaled \$963.75. The petition, however, did not attach a copy of the contingency agreement, nor did it break down how Complainant incurred the legal fees or at what hourly rate counsel charged clients while performing similar work. The petition also did not give any background information regarding the legal experience of Complainant's counsel so as to permit any evaluation as to whether the fees incurred in the instant case were reasonable.

To the extent that counsel is seeking a fee award that represents one third of Complainant's recovery in the instant matter (i.e., one third of \$24,886 or \$8,295.34), I find that counsel has not presented sufficient information regarding her hourly rate, time spent on the case, or her legal background to support such a statutory award. However, it is clear that Complainant's counsel spent some time on this matter, and rather than denying the petition outright for lack of details in the petition, I will award Complainant another \$1,000 in attorney's fees based upon my general notion of the legal community in the Southern Illinois area for time spent preparing the instant matter for a default hearing and appearing at the hearing itself. This award will be in addition to the \$963.75 that Complainant incurred in fees prior to the entry of the Commission's default order.

Recommendation

For all of the above reasons, I recommend that the Commission enter an Order which:

1. Directs Respondent to pay Complainant \$12,886 for lost wages arising out of Complainant's constructive discharge;
2. Directs Respondent to pay Complainant \$12,000 in actual damages arising out of her emotional distress associated with her sexual harassment and retaliation claims;
3. Directs Respondent to pay Complainant \$1,963.75 in attorney's fees;

4. Directs Respondent to cease and desist from sexual harassment.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 21ST DAY OF OCTOBER, 2009